

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

ELIZABETH SINES, SETH WISPELWEY,
MARISSA BLAIR, APRIL MUNIZ,
MARCUS MARTIN, NATALIE ROMERO,
CHELSEA ALVARADO, THOMAS BAKER
and JOHN DOE,

Plaintiffs,

v.

JASON KESSLER, RICHARD SPENCER,
CHRISTOPHER CANTWELL, JAMES
ALEX FIELDS, JR., VANGUARD
AMERICA, ANDREW ANGLIN,
MOONBASE HOLDINGS, LLC, ROBERT
“AZZMADOR” RAY, NATHAN DAMIGO,
ELLIOT KLINE a/k/a/ ELI MOSLEY,
IDENTITY EVROPA, MATTHEW
HEIMBACH, MATTHEW PARROTT a/k/a
DAVID MATTHEW PARROTT,
TRADITIONALIST WORKER PARTY,
MICHAEL HILL, MICHAEL TUBBS,
LEAGUE OF THE SOUTH, JEFF SCHOEP,
NATIONAL SOCIALIST MOVEMENT,
NATIONALIST FRONT, AUGUSTUS SOL
INVICTUS, FRATERNAL ORDER OF THE
ALT-KNIGHTS, MICHAEL “ENOCK”
PEINOVICH, LOYAL WHITE KNIGHTS OF
THE KU KLUX KLAN, and EAST COAST
KNIGHTS OF THE KU KLUX KLAN a/k/a
EAST COAST KNIGHTS OF THE TRUE
INVISIBLE EMPIRE,

Defendants.

Civil Action No. 3:17-cv-00072-NKM

**PLAINTIFFS’ POSITION ON TRANSPORTATION COSTS OF DEFENDANT
CHRISTOPHER CANTWELL**

Plaintiffs respectfully submit this response pursuant to the Court’s order of September 15, 2021, directing the parties to state “their position(s) with respect to payment of transportation costs” of Christopher Cantwell to trial. ECF 1075 at 2.

It is Plaintiffs’ position that the cost of transporting Mr. Cantwell should in the first instance be borne by Mr. Cantwell himself, who brought the writ *ad testificandum*. In the Fourth Circuit, the cost of transportation of an incarcerated defendant at civil proceedings is undertaken at the “[defendant’s] own or government expense,” *Muhammad v. Warden, Baltimore City Jail*, 849 F.2d 107, 113 (4th Cir. 1988).

Assuming that Mr. Cantwell does not have the funds available to cover the relevant costs of attending the entire trial in person, which we understand to be \$15,927.00, the costs should otherwise be covered by the United States Marshals. Courts have routinely ordered the United States Marshals to execute a writ *ad testificandum* — and pay for its execution — when a prisoner is indigent. *See, e.g., Hawks v. Timms*, 35 F. Supp. 2d 464, 468 (D. Md. 1999); *Ballard v. Spradley*, 557 F.2d 476, 481 (5th Cir. 1977); *Rivera v. Santirocco*, 814 F.2d 859, 864 (2d Cir. 1987); *see also Story v. Robinson*, 689 F.2d 1176, 1179 (3rd Cir. 1982) (the authority of federal courts to issue writs *ad testificandum* has never “been qualified by a requirement that the respondent custodian, state or federal, be compensated for compliance with the writ”). “[T]he possibility that a lack of transportation funds or personnel will develop is not a justification for refusing to issue the writ of habeas corpus *ad testificandum*,” *Hawks*, 35 F. Supp. 2d at 468 (quoting *Greene v. Prunty*, 938 F. Supp. 637, 640 (S.D.Cal. 1996) (alterations omitted)). Indeed, courts have ordered that the United States Marshals pay for transportation costs for indigent prisoners, even over the Marshals’ objections or a claimed lack of funds. *See Ballard*, 557 F.2d at 481 (noting “the Marshals Service may be able to meet the expense from contingency funding”); *Hawks*, 35 F. Supp. 2d at

468; *Rivera*, 814 F.2d at 864.¹

Plaintiffs are mindful of the not insignificant costs and security concerns associated with bringing Mr. Cantwell to Charlottesville for the entirety of the relatively lengthy trial (including transporting him to and from the courthouse each day). Accordingly, in an effort to address these concerns, Plaintiffs respectfully submit that it would make sense for the Marshals to bring Mr. Cantwell to Charlottesville only for his own testimony (which we would anticipate should last 1-2 days at most),² after which Mr. Cantwell could participate via videoconference, as previously discussed and arranged with the Court. *See Ballard*, 557 F.2d at 478-79 (affirming district court order directing U.S. Marshals to produce prisoner only for his live testimony and “returning him to ... custody when his presence was no longer required”); *Story*, 689 F.2d at 1777 (same). That should not only result in significant cost savings for the Marshals, but is also consistent with what we understand other Defendants, such as Richard Spencer, intend to do.

Date: September 17, 2021

Respectfully submitted,



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¹ Plaintiffs are unaware of any authority wherein a Court ordered a private litigant to pay for the execution of a writ *ad testificandum* of an opposing party, nor are they aware of a case in which a court predicated granting the writ on payment by another private party. *Greene v. Prunty*, 938 F. Supp. 637, 640 (S.D. Cal. 1996), refers to the sharing of costs among the prisoner and various government entities.

² Plaintiffs are happy to coordinate with the Court and U.S. Marshals on timing, logistics or any other matter.

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2021, I filed the foregoing with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

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I hereby certify that on September 17, 2021, I also served the following non-ECF participants via mail and electronic mail:

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